

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Closed Captioning of Video Programming	)	CG Docket No. 05-231
	)	
Telecommunications for the Deaf, Inc.	)	
Petition for Rulemaking	)	

To: Office of the Secretary  
Attention: The Commission

**JOINT COMMENTS OF  
COSMOS BROADCASTING CORPORATION, COX BROADCASTING, INC.,  
MEDIA GENERAL COMMUNICATIONS, INC., AND MEREDITH CORPORATION**

Cosmos Broadcasting Corporation, Cox Broadcasting, Inc., Media General Communications, Inc., and Meredith Corporation (collectively, the “Joint Broadcasters”), by their attorneys, hereby submit these Joint Comments in response to the Commission’s *Notice of Proposed Rulemaking* (*Notice*) in the above-captioned proceeding.<sup>1</sup> The *Notice* requested comment on a number of proposed changes to the Commission’s closed captioning requirements, including extending real-time captioning obligations of broadcasters and measuring the accuracy of captions.

The Joint Broadcasters are committed to closed captioning and ensuring that television programming is available to the many deaf and hard of hearing viewers. The proposals to extend the real-time captioning obligations and to measure the accuracy of captions, however, are neither feasible nor effective. Any additional regulatory burdens on broadcasters would be unwise, unwarranted, and counter-productive, and, as such, the proposed new rules would jeopardize the Commission’s intended purpose of enhancing the effectiveness of closed captioning.

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<sup>1</sup> Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc. Petition for Rulemaking, CG Docket No. 05-231, *Notice of Proposed Rulemaking*, FCC 05-142 (rel. July 21, 2005).

The Joint Broadcasters own and operate (sometimes through subsidiaries) full-power television stations and Class A low power television stations in markets ranging in size from Atlanta; Tampa; and Louisville to Harlingen, Texas; Bend, Oregon; and Alexandria, Louisiana. Despite their myriad experiences, the Joint Broadcasters all conclude that the more restrictive closed captioning proposals described in the *Notice* would not serve the public interest.

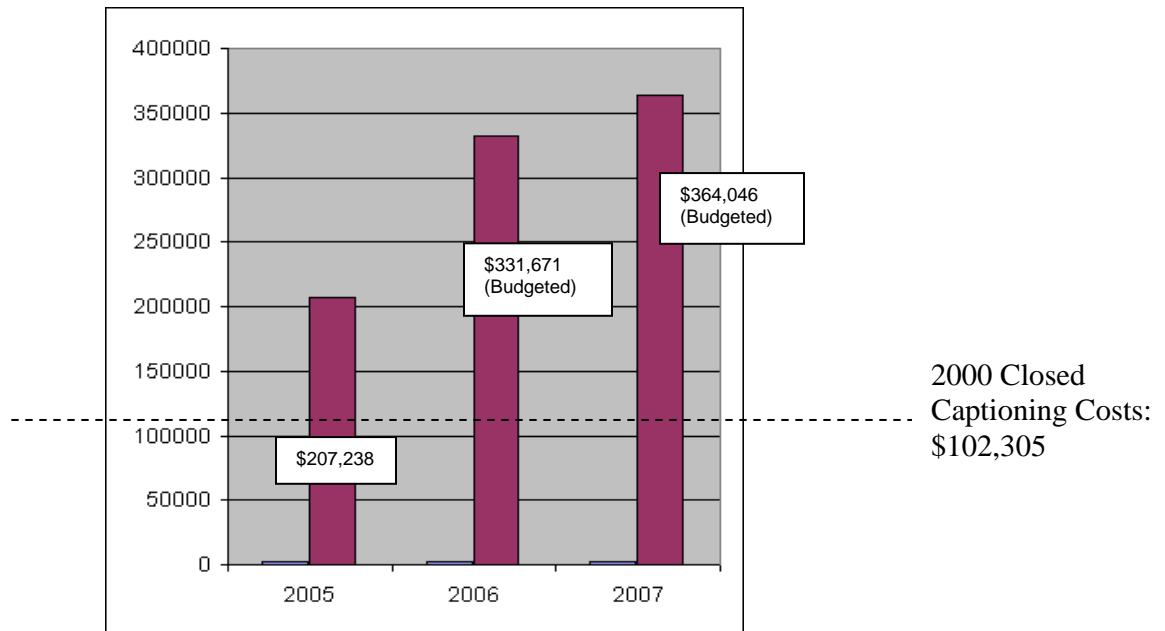
**I. The Commission Should Not Extend its No-ENT Policy to Smaller Markets.**

The Commission should not adopt the proposal to extend the Commission's prohibition against counting electronic newsroom technique (ENT) captioning toward captioning benchmarks to television markets beyond the Top 25 Designated Market Areas. If adopted, the proposal effectively would expand the real-time captioning requirement beyond the Top 25 Big-Four affiliates (ABC, NBC, CBS, and Fox) (and the major cable channels) and impose real-time captioning obligations for local news programming. The effect on midsized and small market broadcasters would be significant, particularly in light of the impending requirement to caption 100% of new nonexempt programming as soon as January 1, 2006.

Real-time captioning obligations would be enormously burdensome on midsized and small market broadcasters. Smaller market broadcasters do not have access to large market resources. Real-time captioning requires significant equipment costs and demands high-wage skilled labor. The current supply of real-time captioners is insufficient to meet broadcasters' captioning needs. While voice-recognition software promises quality real-time captioning at more reasonable costs, it is not ready for broadcast. In the meantime, broadcasters facing the high costs of real-time captioning will be forced to drop local programs from their schedules, disserving the public interest.

**Costs.** Captioning costs are high and have increased significantly in recent years. The following chart reflects the experience of one Big-Four Top 25 broadcaster's actual captioning service provider fees (exclusive of the additional hardware, software, or station personnel costs that accompany closed captioning delivery):

### EXAMPLE OF A TOP 25 BIG-FOUR BROADCASTER'S INCREASING CLOSED CAPTIONING COSTS



As reflected in the above-chart, captioning costs are extremely high and are only likely to further increase. These costs already impose a substantial financial burden on broadcasters. The burden would increase unreasonably if the Commission further limits the circumstances under which captions using ENT would be allowed to count as captioned programming. In a survey of their stations in preparation for these Joint Comments, individual broadcasters reported the following:

- One broadcaster in a small market found that captioning equipment cost approximately \$10,000.
- Real-time captioning service providers' actual per-unit costs range between \$112 and \$150 per hour, or \$102 per half-hour (an hourly rate of \$204 for a 30-minute program).
- An independent affiliate in the Gulf Coast area estimates that captioning a taped 30-minute public affairs program that it co-produces with a local university would cost between \$250 and \$700. Captioning fees for taped programming are often higher than live programming because the captioner takes time to fix mistakes and verify accuracy.

***Closed Captioner Supply.*** The Joint Broadcasters submit that a critical shortage of captioners and captioning services exists. Approximately 500 captioners supply the country's

television program closed captioning,<sup>2</sup> of which approximately 150 are currently employed by the networks. Despite an average salary of about \$63,000, and notwithstanding salaries that can exceed \$100,000, a recruiter for captioning provider WordWave stated that her firm was in need of more captioners “in every major market in the country.”<sup>3</sup> The National Court Reporters Association is working to meet the increasing demand for captioners by improving captioning education, rebranding the work to attract better-qualified students, developing specialized curricula for the captioning specialty, and seeking almost seventy-five million dollars from Congress to train new captioners.<sup>4</sup> Increasing the number of skilled captioners will take quite some time, however. Most of the captioners entered the field from work as court reporters; the National Captioning Institute estimates that retraining court reporters to develop the speed, accuracy, and skills required to be a real-time captioner takes up to a year.<sup>5</sup>

Court reporters, let alone skilled captioners, are unavailable to many broadcasters outside of major cities. Broadcasters surveyed for these Joint Comments noted the following:

- One of the nation’s largest captioning services told a Big-Four affiliate in a small market that, due to the limited supply of captioners, it could not provide captioning services for 2006 unless the broadcaster signed a contract by mid-December.
- The president of another major captioning service company opined to a midwestern broadcaster that increasing demand for the limited supply of captioners will result in less-qualified people supplying closed captioning.

The shortage of professional captioners is only likely to worsen with demand for such services increased by the Commission’s *existing* captioning rules, which will require a large increase in captioned programming starting in January 2006. That shortage would only further worsen if the no-ENT policy is adopted, as broadcasters in small and mid-sized markets would be forced to

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<sup>2</sup> John Nolan (AP), *Captioning Lures Court Reporters*, Deaf Today (Feb. 24, 2004), at [www.deaftoday.com/news/archives/03956.html](http://www.deaftoday.com/news/archives/03956.html).

<sup>3</sup> *Id.*

<sup>4</sup> The National Court Reporters Association, *NCRA Issue Platform – Ensuring Access to CART and Captioning Services*, at <http://www.ncraonline.org/ppa/issues/index.shtml>.

<sup>5</sup> The National Captioning Institute, *What Skills are Needed for this Demanding Work?*, at <http://www.ncicap.org/preview/livecapproc.asp>.

compete with national networks, syndicators, and Top 25 market broadcasters for the limited supply of closed captioning services. The only alternative, using station personnel to caption programming, appears to cost a minimum of \$200,000 per year for twenty-two hours of newscast programming each week. Broadcasters would have to recruit, pay, and send the in-house captioners to a training provider, which often will be located in another city or state. One Big-Four affiliate estimates that it would take a minimum of two employees at \$20 per hour to cover its newscasts (excluding benefits, training, and overhead). Another Big-Four affiliate in a different market, however, estimates that it would need to hire three to four new employees at \$30,000 to \$35,000 per year, plus benefits, assuming that it can locate qualified individuals in its area.

Clearly, broadcasters in all markets already face a critical shortage of skilled captioners and that supply is only likely to decrease further as the 100% captioning requirement becomes effective. The shortage of skilled captioners, coupled with the high costs of captioning, pose potentially insurmountable challenges for broadcasters in even the largest markets.

***Disproportionate Burdens.*** Real-time captioning obligations would be disproportionately burdensome on smaller market broadcasters that are already struggling to comply with a host of new regulations without large market resources. Real-time newscast captioning would require the same skilled labor in a Top 25 market as any of the smallest markets, at roughly the same cost. Yet real-time captioning would represent a much higher proportional cost for broadcasters with lower revenues than Top 25 Big-Four affiliates.

Large markets serve greater numbers of deaf and hard of hearing viewers, who may reward broadcasters for their dedication to providing real-time captioning. Broadcasters in large markets are also more likely to find advertisers willing to sponsor closed captions to reach the deaf and hard of hearing community. Large viewing populations, greater advertising revenues, larger communities of deaf and hard of hearing viewers, and a proportionately lower real-time captioning cost provide some market efficiencies to broadcasters in the larger markets. Broadcasters in mid-sized and small

markets, however, would suffer the burden without obtaining any efficiencies of cost off-sets because they lack the high advertising revenue and the larger communities of deaf and hard of hearing viewers in the big markets.

***Risks to Local Programming.*** Small and midsized market broadcasters are more sensitive to the regulatory burdens posed by the proposed closed captioning rules in addition to other recent or impending obligations. Quite simply, because the money (not to mention the personnel) to caption local news are not available in the current rapidly changing competitive environment, the high costs of real-time captioning of local news create the very real prospect of a loss of local newscasts in small and midsized markets.

The transition to digital television has monopolized substantial portions of broadcasters' capital expenditures in recent years. New equipment, demands on station personnel, licensing efforts, and management time are but a few of the costs imposed by the digital transition without regard to market size. Broadcasters also face new children's programming regulatory burdens. Beginning in January 2006, the Commission's commercial limits in children's programming rules will expand the definition of "commercial matter," regulate Internet web site addresses in broadcasts and advertisements, extend core children's programming obligations to digital transmissions, and enforce a new ceiling on core programming preemptions. The Commission's proposed changes to the Emergency Alert System, including mandatory upgrade of station EAS equipment, mandatory transmission of state and local alerts, and the extension to cover digital media such as digital television represent further regulatory costs and obligations for local broadcasters.

As the Commission imposes an increasing array of new regulatory obligations for local broadcasters, competition from new technology increasingly chips away at broadcasters' historic business models. Video on demand and digital video recorders are luring viewers away from broadcasters and the advertisements on which they depend for their livelihood. The networks have slashed or eliminated altogether compensation to affiliates while beginning to distribute network

programming to viewers through other outlets, including, most recently, Video iPods. And advertisers in general are spending portions of their former broadcast television budgets on cable, satellite, and new media such as the Internet. In short, the Commission's proposed real-time captioning requirement very well could prove to be the "economic straw" that makes broadcasting local programming impractical in vast areas of the country.

***Benefits v. Burdens.*** The burdens of extending the prohibition against counting ENT towards the closed captioning requirement outweigh any minimal benefits from real-time captioning. ENT enables broadcasters in small and midsized markets to provide quality closed captioning at a manageable cost. Those broadcasters lack the economy of scale that permits broadcasters in the Top 25 markets to compete for the limited supply of captioners. Even if the captioning industry could scale-up in time to meet a new regulatory deadline, real-time captioning of local newscasts would add only a marginal amount of closed captioning (minimal unscripted material such as ad lib weather or sports updates) at a disproportionate cost. The proposal would help only a relatively small number of people while imposing new demands on already strained resources. The effects threaten local programming, which cannot support the costs of real-time captioning, and would risk substantial degradation of closed captioning quality by forcing most broadcasters to compete for the limited supply of real-time captioners.

The costs of expanding a real-time captioning requirement are clearly outweighed by the minimal benefits that such a rule would entail. In addition, maintaining the status quo by preserving small and midsized market broadcasters' use of ENT would benefit the deaf and hard of hearing viewers and furthers Congress' goal of ensuring all Americans' access to video programming. By captioning the script, ENT permits the broadcaster to present a quality captioned product that assures complete, accurate, and nuanced captioning of essential programming often without imposing material costs on broadcasters. Like captioning taped programs, ENT enables broadcasters to review the closed caption content before it is broadcast, thereby encouraging more accuracy than real-time

captioning. The manageable cost of ENT makes closed captioning more practical to broadcasters in small and midsized markets, which enables more widespread broadcast of closed captioning. As such, ENT allows many more live newscasts to be captioned than might otherwise be feasible.

## **II. The Commission Should Not Implement Non-Technical Quality Standards for Closed Captioning.**

The Joint Broadcasters recognize that closed captioning errors occur, but the Joint Broadcasters and others like them are doing the best they can to improve accuracy. Translating spoken voices, non-verbal sounds, and other audible information into written text is never a simple process. Real-time captioning demands more from captioners and carries an inherent risk of error because it is “live.” Mistakes are generally in the form of incorrect yet phonetically similar words (such as “row place” instead of “replace”),<sup>6</sup> unfamiliar proper nouns, and foreign language words that are not understood quickly by the captioner. Real-time captioning is especially difficult because the captioner, unlike a traditional court reporter, has no means of revising the caption text. And local newscasts’ faster pace make them more difficult to caption than national newscasts.<sup>7</sup> The Commission recognizes that large cable and broadcast networks already struggle with captioning quality. The Joint Broadcasters have no reason to believe that local broadcasters, with fewer resources and less access to skilled captioners, would find greater success.

***Practical Problems.*** Imposing non-technical quality standards, such as transcription accuracy, spelling, grammar, placement, speed, font, identification of nonverbal sounds, etc., would be unworkable and would not serve the public interest. The proposal, if implemented, would shift the focus from serving local viewers to meeting artificial appearance standards. New standards would result in increased compliance costs, decreased ability to meet other community needs, and the

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<sup>6</sup> The National Captioning Institute, *How is Real-Time Captioning Created?*, at <http://www.ncicap.org/preview/livecapproc.asp>.

<sup>7</sup> Cary Ashby & Trevor Jones, *Broadcasting Captioning Luring Court Reporters*, Deaf Today (Jan. 18, 2004), at <http://www.deaftoday.com/news/archives/003833.html>.



loss of locally-produced programming such as religious or community affairs programs in favor of programming that is captioned to a national standard. Indeed, imposing quality standards could have the unintended negative consequence of decreasing captioning quality. The Joint Broadcasters have found that at least one of the largest captioning companies recently changed its contracts to make it harder for the captioner to be held accountable for captioning errors due to the Commission's proposed quality standards. None of these results would serve the public interest.

Such stringent quality standards do not apply to spoken words or printed text; no rule requires television broadcasts to use good spoken grammar or vocal pace. And it would be preposterous for the Commission to require captioners to correct any such on-air grammatical errors to comply with new quality captioning standards. If, for example, a reporter says, "The House and Senate approved a pay raise for themselves," would the broadcaster be required by the Commission's proposed new rule to display instead the grammatically correct version of that sentence?

Moreover, as described above, the inadequate supply of competent closed captioning technicians cannot meet any new mandates and captioning company recruiters cannot hire enough captioners to fill existing jobs. Real-time captioners may require years of training before they are ready to go "on the air" (one Big-Four affiliate pointed-out that it "requires a long time exposure to gain a non-technical quality standard of more than 85%"). The Commission's proposal would overstrain the existing supply of these highly-paid, highly-skilled workers, and would not improve captioning quality.

Determining what constitutes an "error" for Commission enforcement or viewer complaints would prove difficult, if not impossible. Justice Potter Stewart's "I know it when I see it" definition certainly would not provide a workable standard.

Defining an “error” raises numerous questions, such as the following:

- Would the definition of spelling “errors” rely on a readily accessible source such as a dictionary?
- How would the new mandate establish placement, speed, font, or roll-up/pop-on guidelines, given the variances between television display technologies?
- And how would a broadcaster or the Commission check the validity of complaints—would this proposal also require taping and storing broadcasts for some period of time?

These issues are difficult to solve and, even if specified in detail, are unlikely to ensure complete captioning “accuracy,” especially with the current limited supply of skilled captioners.

***Market Incentives.*** Caption quality has improved in recent years and many broadcasters expect continued improvement in the future. Market incentives such as viewers’ demands for closed captioning have grown and are sufficient to address non-technical captioning quality issues. Broadcasters will demand quality captioning from their suppliers because, ultimately, their viewers will hold them responsible regardless of whether the program was captioned by a network, syndicator, local producer, or the broadcaster itself. At the very least, stations have a ratings interest in accurate captioning. The Nielsen rating system does not exclude hard of hearing viewers from its diary panels; consequently, broadcasters have an existing incentive to supply closed captioning at the risk of losing market share in addition to responding to complaints by viewers or the Commission. A broadcaster’s reputation is on the line every day and in every program and therefore is keenly interested in improving captioning in its programming.<sup>8</sup>

Instead of *mandating* a high percentage of “error”-free content, the Commission should continue to *encourage* video programming providers to establish non-technical quality standards through their agreements with captioning companies. Broadcasters are becoming increasingly adept

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<sup>8</sup> One Big-Four affiliate in a Top 25 market recently terminated its real-time captioning contract early, despite a threatened lawsuit, due to its captioning service company’s error rate. It replaced the company with a more accurate closed captioning provider immediately thereafter.

at negotiating captioning service agreements and monitoring performance. In fact, the Joint Broadcasters report the following:

- Most captioning service companies include accuracy provisions in broadcast contracts.
- Captioning companies often claim accuracy of at least 95%.
- Recent syndicated programming contains higher-quality captioning.

Broadcasters have direct relationships with their captioning companies; they have the incentive and the means to demand accurate captioning. More importantly, broadcasters have direct relationships with their viewers, who will transfer their loyalty to another broadcaster if their needs are unfilled. Broadcasters recognize this truism above all others and live by it daily. Advertising rates and, consequently, broadcasters' revenues follow viewers. Such market forces are sufficient to continue the trend and broadcasters' hard work to increase closed captioning quality.

Some broadcasters have explored voice recognition technology and eagerly await its maturity to enable them an automated and in-house closed captioning solution. The information technology industry is likely to solve this problem as it invests millions to develop reliable software and equipment that will interface with broadcast facilities. In the meantime, market incentives are sufficient to address non-technical quality closed captioning issues and broadcasters should not be burdened with artificial and unworkable appearance standards.

***Adverse Consequences.*** Mandating new standards in captioning will further increase the costs of local programming, which typically are produced on shoestring budgets, have short production time schedules, and no likelihood of national syndication to offset the investments. Many broadcasters and small producers produce programming locally for community churches, businesses, and other organizations. Such local programming includes travelogues, hunting/fishing shows, agriculture reports, local sports, and public affairs programming. Additional production expenses to comply with any new quality standards, coupled with the challenge to find an off-line captioning resource, threaten the viability of local programming. If local programming becomes prohibitively

expensive, many broadcasters will need to secure nationally syndicated and paid programming that comes pre-captioned.

From its very beginning, the Commission has strived to foster local programming and localism. The proposed new quality standards would stifle those efforts.

### **III. Conclusion**

Broadcasters and others are doing the very best they can to provide effective closed captioning. The proposals to extend real-time obligations of broadcasters and measure the accuracy of captions would not further the Commission's goal of making captioning more effective but would have unintended negative consequences. Adoption of a no-ENT policy for smaller markets would impose disproportionate burdens and enormous costs on midsized and small market broadcasters, forcing many of them to drop their current local programming. Imposing non-technical quality captioning standards is unworkable and would not significantly improve captioning quality. As such, the proposals would not serve the public interest. In contrast, preserving small and midsized market broadcasters' use of ENT enables more widespread closed captioning, furthering Congress' goal of ensuring all Americans' access to video programming. In addition, market incentives are more than sufficient to resolve any non-technical quality closed captioning issues.

Respectfully submitted,

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